

Original filed 9/30/06

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAMUEL WILLIAM LEWIS

Petitioner,

vs.

A.P. KANE,

Respondent.

No. C 06-1727 JF (PR)

ORDER TO SHOW CAUSE

Petitioner, a state prisoner proceeding pro se, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging the Board of Prison Terms' ("Board") failure to grant him parole after his October 28, 2004 parole suitability hearing. The instant petition was transferred to this Court from the Central District of California on March 7, 2006. Petitioner paid the filing fee in the Central District Court. The Court orders Respondent to show cause why the petition should not be granted.

STATEMENT

In 1988, Petitioner was convicted of second degree murder and sentenced to a term of fifteen years-to-life in state prison. On October 28, 2004, Petitioner had his third parole suitability hearing before the Board. Petitioner was denied parole. The petition

1 alleges that Petitioner raised his claims with the state appellate court and the state
2 supreme court. The instant petition was filed on February 7, 2006 in the Central District
3 of California and then transferred to this Court on March 7, 2006.

4 DISCUSSION

5 A. Standard of Review

6 A district court may entertain a petition for writ of habeas corpus “in behalf of a
7 person in custody pursuant to the judgment of a State court only on the ground that he is
8 in custody in violation of the Constitution or laws or treaties of the United States.” 28
9 U.S.C. § 2254(a); Rose v. Hodges, 423 U.S. 19, 21 (1975).

10 A district court shall “award the writ or issue an order directing the respondent to
11 show cause why the writ should not be granted, unless it appears from the application that
12 the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

13 B. Petitioner’s Claims

14 Petitioner alleges the following claims for federal habeas relief: (1) the Board of
15 Prison Terms and the Los Angeles Superior Court violated the binding terms of
16 Petitioner’s plea agreement contract and his state and federal right to Due Process of the
17 law; and (2) the Board’s decision was arbitrary and capricious, there was no evidence to
18 support the decision, the findings are not in the regulatory code which governs the Board
19 and were not admissions of fact in the plea contract in violation of Petitioner’s rights
20 under the Fifth, Sixth, and Fourteenth Amendments. See Pet. at 5. Liberally construed,
21 Petitioner’s claims are sufficient to require a response. The Court orders Respondent to
22 show cause why the petition for a writ of habeas corpus should not be granted.

23 CONCLUSION

24 1. The Clerk shall serve a copy of this order and the petition and all
25 attachments thereto upon Respondent and Respondent’s attorney, the Attorney General of
26 the State of California. The Clerk shall also serve a copy of this order on the Petitioner.

27 2. Respondent shall file with the Court and serve on Petitioner, within **sixty**
28 **days** of the issuance of this order, an answer conforming in all respects to Rule 5 of the

1 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should
2 not be granted. Respondent shall file with the answer and serve on Petitioner a copy of
3 all portions of the state parole record that have been transcribed previously and that are
4 relevant to a determination of the issues presented by the petition.

5 If Petitioner wishes to respond to the answer, he shall do so by filing a traverse
6 with the court and serving it on Respondent within **thirty days** of his receipt of the
7 answer.

8 3. Respondent may file a motion to dismiss on procedural grounds in lieu of
9 an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules
10 Governing Section 2254 Cases. If Respondent files such a motion, Petitioner shall file
11 with the court and serve on Respondent an opposition or statement of non-opposition
12 within **thirty days** of receipt of the motion, and Respondent shall file with the Court and
13 serve on Petitioner a reply within **fifteen days** of receipt of any opposition.

14 4. It is Petitioner's responsibility to prosecute this case. Petitioner is
15 reminded that all communications with the Court must be served on Respondent by
16 mailing a true copy of the document to Respondent's counsel. Petitioner must keep the
17 Court and all parties informed of any change of address by filing a separate paper
18 captioned "Notice of Change of Address." He must comply with the Court's orders in a
19 timely fashion. Failure to do so may result in the dismissal of this action for failure to
20 prosecute pursuant to Federal Rule of Civil Procedure 41(b).

21 IT IS SO ORDERED.

22 DATED: 9/30/06


JEREMY FOGEL
United States District Judge

1 A copy of this order was mailed to the following:

2
3 Samuel William Lewis
4 E-05524
5 Correctional Training Facility - Soledad
6 P.O. Box 689
7 Soledad, CA 93960-0689

8 California State Attorney General's Office
9 455 Golden Gate Avenue
10 Suite 11000
11 San Francisco, CA 94102-7004
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